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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAN BRUNO MOUNTAIN WATCH,

Plaintiff,

No. C 00-2485 PJH

v.

ORDER

U.S. FISH & WILDLIFE SERVICE

Defendant.

15 The court is in receipt of letter briefs recently filed by the parties in the above-
16 entitled action. Having considered the parties' arguments and the relevant legal authority,
17 the court now rules as follows.

18 This case was settled pursuant to a consent decree and final judgment filed on
19 January 6, 2003. Plaintiff San Bruno Mountain Watch (“Mountain Watch”) filed a motion to
20 enforce the judgment on February 27, 2006, but withdrew the motion on April 20, 2006.
21 Mountain Watch claims that it is entitled to attorneys’ fees in connection with the motion to
22 enforce the judgment.

23 On August 14, 2006, Mountain Watch served defendant U.S. Fish & Wildlife Service
24 ("FWS") with discovery requests. FWS objects to the discovery, arguing that because the
25 consent judgment contained no reservation of jurisdiction, the court lacked jurisdiction over
26 the motion to enforce the judgment at the time it was filed, and still lacks jurisdiction over
27 the case. FWS also seeks leave to file a motion for a protective order.

28 Mountain Watch contends that the court must enforce the consent decree in

United States District Court
For the Northern District of California

1 accordance with the intent of the parties, and asserts that the plain language of the consent
2 judgment demonstrates that it was the parties' intent to grant the court continuing
3 jurisdiction. Mountain Watch also argues that under Kokkonen v. Guardian Life Ins. Co. of
4 America, 511 U.S. 375 (1994), the court retains jurisdiction to enforce the consent
5 judgment, and has "ancillary jurisdiction" over any potential motion for attorneys' fees for
6 such enforcement.

7 In Kokkonen, the parties in a diversity action entered into a settlement agreement
8 which they orally placed on the record. 511 U.S. at 376. The parties then stipulated to a
9 dismissal with prejudice. Id. at 377. The stipulation and order did not reserve jurisdiction in
10 the district court and did not refer to the settlement agreement. Id. When one of the
11 parties moved to enforce the agreement, the other party argued that the district court
12 lacked subject matter jurisdiction. The Supreme Court agreed. Id.

13 The Court noted that "[f]ederal courts are courts of limited jurisdiction. They possess
14 only that power authorized by Constitution and statute . . . which is not to be expanded by
15 judicial decree." Id. (citations omitted). The Court held that federal courts do not have
16 inherent or ancillary jurisdiction to enforce a settlement agreement simply because the
17 subject of that agreement was a federal lawsuit. When the initial action terminates, federal
18 jurisdiction terminates.

19 The Court explained that "[e]nforcement of . . . [a] settlement agreement, . . .
20 whether through award of damages or decree of specific performance, is more than just a
21 continuation or renewal of the dismissed suit, and hence requires its own basis for
22 jurisdiction." Id. at 378. The mere existence of an "agreement that has as part of its
23 consideration the dismissal of a case before a federal court," id. at 380, without more, is not
24 a sufficient basis for a federal court's jurisdiction. In the case before it, the Court found no
25 independent basis for the district court to exercise subject matter jurisdiction to enforce the
26 settlement agreement at issue.

27 In doing so, however, the Court articulated circumstances where the district court
28 would have subject matter jurisdiction:

1 The situation would be quite different if the parties' obligation to comply with
2 the terms of the settlement agreement had been made part of the order of
3 dismissal – either by separate provision (such as a provision "retaining
4 jurisdiction" over the settlement agreement) or by incorporating the terms of
 the settlement agreement in the order. In that event, a breach of the
 agreement would be a violation of the order, and ancillary jurisdiction to
 enforce the agreement therefore would exist.

5 Id. at 381. The Court emphasized that absent the parties' expression of their desire to
6 provide for the court's enforcement of a settlement agreement, "enforcement of the
7 settlement agreement is for state courts, unless there is some independent basis for
8 federal jurisdiction." Id. at 382

9 In O'Connor v. Colvin, 70 F.3d 530 (9th Cir. 1995), the Ninth Circuit elaborated on
10 Kokkonen: "The settlement terms must be part of the dismissal in order for violation of the
11 settlement agreement to amount to a violation of the court's order. Without a violation of
12 the court's order, there is no jurisdiction." Id. at 532; see also Hagestad v. Tragesser, 49
13 F.3d 1430, 1433 (9th Cir. 1995). In Linebarger v. United States, 927 F.Supp. 1280 (N.D.
14 Cal. 1996), the court found that "the order of dismissal plainly set[] forth the obligations of
15 the parties under the settlement agreement" and that the terms "were incorporated as part
16 of the dismissal order." The court concluded that it therefore "retain[ed] jurisdiction to
17 enforce the terms of the settlement agreement." Id. at 1281-82.

18 In the present case, the consent judgment does not contain an express provision –
19 which, the court notes, is routinely found in such documents – retaining this court's
20 jurisdiction over the agreement. Nor do the paragraphs referenced by Mountain Watch
21 reflect the intent of the parties to include such a provision.

22 The court finds, however, that the parties did incorporate all of the terms of their
23 settlement into the consent judgment, which is an order of the court. The consent
24 judgment, which is also a "final judgment," states in the preamble that "this Consent
25 Judgment is intended to resolve all Claims Plaintiff has alleged in this matter . . ." and that
26 "the parties do hereby consent to the entry of judgment." The parties agreed further that
27 "[t]his Judgment constitutes the final, complete and exclusive agreement and
28 understanding among the parties thereto with respect to the matters addressed herein,"

1 and that “[t]here are no representations, agreements, or understandings relating to this
2 Judgment other than those expressly contained herein.”

3 Thus, under the rule articulated in Kokkenen, the court finds that it has ancillary
4 jurisdiction to enforce the consent decree, and that it had jurisdiction over the case when
5 Mountain Watch filed its motion to enforce the consent decree.

6 However, the court finds no basis for an award of attorneys' fees. The American
7 Rule generally provides that absent statute or enforceable contract, litigants pay their own
8 attorneys' fees. See Alyeska Pipeline Serv. Co. v. Wilderness Soc'y, 421 U.S. 240, 247
9 1975); Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res., 532
10 U.S. 598, 602 (2001). Here, the settlement provided for payment of a total of \$130,000 in
11 attorneys' fees, but that payment was in connection with settling the merits of the lawsuit.
12 There is no provision in the settlement for payment of fees in an action for enforcement of
13 the consent judgment. Nor is the court aware of any statutory authorization for payment of
14 attorneys' fees for such enforcement.

15 In the absence of any basis for an award of attorneys' fees, the court finds that
16 Mountain Watch is not entitled to discovery. Thus, FWS need not respond to Mountain
17 Watch's discovery requests. If Mountain Watch is aware of some basis for awarding the
18 fees that it seeks, it may file a formal motion seeking an order re entitlement to fees. If an
19 entitlement to fees is found to exist, Mountain Watch's entitlement for discovery will be
20 determined by the court. Any such motion must be filed no later than October 30, 2006,
21 the opposition shall be filed no later than November 13, 2006, and the reply shall be filed
22 no later than November 20, 2006. The court will rule on the papers.

23

24 **IT IS SO ORDERED.**

25 Dated: September 29, 2006


26 PHYLIS J. HAMILTON
27 United States District Judge

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